IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-02-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE M. JAICHANDREN

O.S.A.Nos.193 of
2002 & 178 of 2003
and
C.M.P.NO.8947 of 2006

The State of Tamil Nadu,
rep. by the Commissioner &
Secretary to Government,
Environment & Forests Department,
Fort St. George, Chennai 9. .. Appellant in
OSA.NO.193/2002 &
Respondent in
OSA.No.178/2003

Vs.

M/s. Natesan Agencies (Plantations),
rep. by its Partner,
Main Road, Kallidaikurichy,
Ambasamudram Taluk,
Tiruneleveli District. .. Respondent in
OSA.No.193/2002 &
Appellant in
OSA.NO.178/2003

Appeals filed under Order 36 Rule 1 of O.S. Rules read with Clause 15 of Letters Patent against the judgment and decree passed by the learned single Judge in C.S.No.561 of 1998 dated 15.10.2001.

For Appellant in
OSA.NO.193/2002 &
Respondent in
OSA.No.178/2003 : Mr.P.S. Raman
Addl. Advocate General for
Mr.Tutis Jesudoss
Spl.G.P

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For Respondent in
OSA.No.193/2002 & : Mr.G. Masilamani
Appellant in Senior Advocate for
OSA.NO.178/2003 Mr.M. Balachander

COMMON JUDGMENT

P.K. MISRA, J

O.S.A.No.193 of 2002 has been filed by the Defendant State challenging the judgment and decree of the learned single Judge directing payment of Rs.1,02,21,371.67 with interest, whereas O.S.A.No.178 of 2003 has been filed by the plaintiff claiming higher amount.

2. The background facts as culled out from documents are as follows:-

Admittedly Sri Vanamamalai Jeer Math of Nanguneri village is the owner of vast extent of forest lands. Out of the said lands, an area of 180.36 acres of forest land had been leased in favour of the plaintiff for a period of 5 years with effect from 1.7.1972 as per Ex.P-2. At that stage, vide G.O.Ms.No.183, Forest & Fisheries Department dated 6.3.1976 (Ex.P-4) the State Government approved the proposal of the Chief Conservator of Forests to notify Kalkakadu Reserve Forest as sanctuary for wild life and accordingly a notification under Section 18(1) of the Wild Life Protection Act, 1972 (hereinafter referred to as "the Act) was issued declaring its intention to constitute the said forest as wildlife sanctuary. On 14.11.1976, as per Ex.P-5, permission sought for by the plaintiff for clear felling of trees in respect of 10 acres of land was rejected inter alia on the ground that notification under Section 18 of the Act had been issued. On 14.7.1977, as per Ex.P-6, a proclamation under Section 21 of the Act was issued by the Collector specifying the limits of the sanctuary and requiring any person having any right to file claim in Form No.8 under the Wild Life Protection (Tamil Nadu) Rules, 1975. On 20.3.1978, a registered lease deed Ex.P-3 was executed between the plaintiff and Sri Vanamamalai Jeer Mutt granting a further lease in favour of the plaintiff for a period of 25 years with effect from 1.7.1977. On 28.8.1978, vide Ex.P-7, a revised proclamation was notified by the Collector under Section 21 of the Act, wherein it was indicated for general information that persons claiming any right in or over the lands or to any forest produce thereof are required to prefer a written claim in the prescribed Form No.8 specifying the nature and extent of such right with necessary details and the amount and particulars of compensation if any claimed in respect thereof within a period of two months from the date of proclamation.

On 31.8.1978, a notification in Tamil vide Ex.P-8 was issued cancelling the earlier notification issued on 14.7.1977. Pursuant to such

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notifications, claims had been putforth separately by the original owner as well as the plaintiff. Thereafter, for a long period of time, various formalities to complete the land acquisition were being processed. Proposal had been made by the officials concerned relating to compensation to be paid to different interested persons and ultimately date for enquiry relating to award was fixed. At that stage, W.P.No.685 of 1991 was filed by the original owner challenging the acquisition proceedings and seeking for stay of the award enquiry proceedings and praying for exclusion of the land belonging to the Mutt. A counter affidavit was filed by the State at that stage stating that it was not possible to exclude the said lands from the limits of the sanctuary. Ultimately, such writ petition was dismissed as per Ex.P-25 on 13.7.1991. W.A.No.1071 of 1991 preferred against such order by the land owner was dismissed, but the authorities were directed to expedite the award proceedings. Since the matter remained pending till 1993, W.P.No.6931 of 1993 was filed by the Mutt as well as by the present plaintiff for issuing a writ of Mandamus for completing the process of acquisition of land. On 11.8.1993, vide Ex.P-30, a learned single Judge of this Court passed an order directing the competent authorities to pass appropriate orders within a period of four weeks. However, on 12.11.1993, the Government issued letter Ex.P-32 to the Special Commissioner & Commissioner of Land Acquisition to exclude the land in question from the limits of the wild life sanctuary. Thereafter similar letter was issued by the Commissioner to the Collector vide Ex.P-33. Consequently, on 19.11.1993, the Collector passed an order excluding the lands in question from the purview of the notification. W.P.No.21721 of 1993 was filed challenging the said order of exclusion issued by the Collector. Such writ petition was allowed by the learned single Judge by judgment dated 13.9.1995 vide Ex.P-35. However, Writ Appeal No.1041 of 1995 filed against such order was allowed vide order dated 18.9.1997 by the Division Bench and the order of the learned single Judge was set aside and the writ petition was dismissed. However, it was observed as follows :-

> "20. We do not propose to say that the Government is blemishless. On the other hand, the Government had acted thoughtlessly both at the stage of the notification under Section 18 and at that stage of withdrawal from the notification. The Government must suffer the consequences of their action, both in issuing declaration under Section 18 and in committing inordinate delay in passing the award and ultimately withdrawing from the notification. But the damages suffered by the respondents on account of the Government's acts of commission and omission has to be proved in a Court of law. The respondents have no doubt, a valid case against the Government for their acts of commission and omission. The question is what is the actual remedy of the respondents. The maxim ubi jus ibi remedium (where there is a right, there is a remedy), is no doubt applicable on the facts of the present case. But, we are only pointing out that the remedy of the respondents is elsewhere. They have no right to insist on the Government completing the acquisition proceedings and proceeding with the project as a sanctuary. On the facts and

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circumstances of the case, we concede the power of the Government to withdraw from the notification an refuse to pass an award under the Land Acquisition Act. We keep it open to the respondents to take appropriate civil action for quantifying their damages and for this purpose, it is certainly open to them to rely on the provisions of the Limitation Act for excluding the period during which they had been prosecuting the matter in this Court."

Ultimately, it was observed :-

"23. ... Consequently, the prayer sought for in W.P.No.21721 of 1993 cannot be granted and the writ petition will stand dismissed. The appeal is allowed and in the above manner, leaving it open to the respondents to agitate their rights in an appropriate forum." (Emphasis added)

SLP.Nos.3695 and 3696 of 1998 filed against the said decision were dismissed on 23.2.1998. Thereafter notice under Section 80 CPC was issued vide Ex.P-38 on 1.3.1998 and the suit C.S.No.561 of 1998 was filed in High Court in its Original Side on 8.6.1998 mainly on the allegation that the plaintiff is entitled to claim damages from 6.3.1976 till 18.9.1997 as the defendant had prevented the plaintiff from enjoying the lands and the defendant was liable to pay damages including loss of income suffered by the plaintiff from 6.3.1976.

In all the plaintiff has claimed Rs.1,31,95,000/- towards loss of earnings. Accordingly prayer was made for paying the aforesaid amounts along with pendente lite and future interest at the rate of 18% and costs.

3. As already indicated, various developments, which have been noticed earlier were encapsulated in the plaint and the basis of the claim was that because of issuance of notification under Section 18 and the subsequent events the plaintiff was prevented from enjoying the lands. It was stated that right to claim damages accrued on 18.9.1997, when the order in W.A.No.1041 of 1995 was passed. It was further stated that the suit was filed before the High Court in its Original Side as the cause of action to claim damages arose because of the order passed on 19.11.1993, when the lands of the plaintiff were excluded from the sanctuary and, finally on 18.9.1997, when the Division Bench of the High Court upheld the exclusion of the lands and on 23.2.1998, when the Supreme Court of India confirmed the order passed by the Division Bench.

4. A written statement was filed by the defendant, wherein it was stated that the suit was not maintainable and the plaintiff was not entitled to any damages from the defendant. There was no agreement or contract between the plaintiff and the defendant and the plaintiff was a stranger to the defendant and there was no loss caused to the plaintiff by the defendant. In the written statement, various developments, which had already been noticed in the introductory paragraphs, were also recounted. It was further stated :-

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"7. ... The subject land was never taken or controlled by Forest department and neither the owner nor the lessee were prevented from enjoying the property. They were not in actual possession and enjoyment of the property for about 22 years is nothing but a blatant lie and is purported only for the present claim. The allegations and averments in para 10 of the plaint is false and he is put to strict proof of the same."

It was further stated that the plaintiff was only a lessee under the Mutt and there was no connection between the plaintiff and the defendant and the land owner had not come forward making any claim and if the plaintiff has any right under the law, it has to seek remedy only with the lessor and not with the defendant. Besides the above, the question of limitation and the question of territorial jurisdiction were also raised. In connection with the question of limitation, it was stated that even according to the plaintiff, cause of action had arisen as early as from 6.3.1976. Even otherwise the Collector excluded the land from the proposed sanctuary on 19.11.1993 and therefore the suit was barred by limitation. It was further stated that the suit was also barred on account of non-joinder of necessary parties, namely, the Collector of Tirunelveli and the Government of India.

5. On the basis of the aforesaid pleadings, the learned single Judge framed the following issues:-

"1. Whether this court has territorial jurisdiction to try this suit ?
2. Whether the suit is barred by limitation?
3. Whether the suit is bad for non-joinder of necessary parties ?
4. Whether the suit land was notified as forming part of the Wildlife Sanctuary ?
5. Whether the plaintiff is entitled to damages and if so what amount ?
6. Whether the plaintiff is entitled to interest ?
7. Whether there is any privity of contract between the parties to claim compensation ?
8. To what relief ?

6. While considering Issue No.1 relating to territorial jurisdiction, the learned single Judge held that since the Special Commissioner and Commissioner of Land Acquisition had issued a letter dated 12.11.1993 directing the Collector to issue notification excluding the lands in question, it can be said that cause of action for filing the suit has arisen within the jurisdiction of this Court.

On issue No.2 relating to question of limitation, the learned single Judge seems to have accepted the contention of the plaintiff to the effect that cause of action arose on 17.11.1993 and the period from 13.9.1995, when the writ petition was allowed, till 18.9.1997, when the writ appeal was allowed and the notification dated 17.11.1993 was upheld by dismissing

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such writ petition should be excluded.

While deciding Issue Nos.4 & 5, it was held that the suit land had been notified forming part of Wild Life Sanctuary thereby preventing the plaintiff from exercising his right and as such the plaintiff was entitled to damages and the plaintiff was entitled to a sum of Rs.50.82 lakhs at the rate of Rs.2,31,000/- for 22 years and a sum of Rs.1,00,000/- towards the cost of repairing factory office and labour sheds. However, the learned single Judge negatived the claims relating to cost of plantation and rearing operation and loss of revenue for 3 years.

While considering Issue No.6, the learned single Judge held that the plaintiff was entitled to interest at the rate of 6% per annum instead of 12% per annum as claimed by him from the period 6.3.1976 to 18.9.1997, which comes to Rs.35,06,000/- and thereafter he is entitled to 9% interest from the date of filing of the suit till the date of realisation. In view of the findings on Issue Nos.4 and 5, Issue No.7 was also answered in favour of the plaintiff. Ultimately, the learned single Judge decreed the suit in the following terms:-

> "15. In the result, the suit is decreed in part and the plaintiff is entitled to (i) Rs.50,82,000/- towards loss of earnings (ii) Rs.35,06,000/- towards interest on loss of earnings and (iii) Rs.1,00,000/- towards Repairs to Factory/Office and labour sheds amounting in all Rs.86,88,000/- with further interest at the rate of 9% per annum from the date of plaint till realisation with costs."

7. O.S.A.No.193 of 2002 has been filed by the State to set aside the judgment and decree granted in C.S.No.561 of 1998 dated 15.10.2001. O.S.A.No.178 of 2003 has been filed to set aside the judgment in respect of Item No.(b) of the plaint (interest - which had been allowed only in part at 6% by the learned single Judge) and claiming a further amount of Rs.35,07,000/- towards pre-suit interest at higher rate.

8. In the appeal filed by the State, primarily the following contentions have been raised :-

(1) The plaintiff is not the owner of the land, but only a lessee and not entitled to any damages. Moreover, the lease was not binding as the original owner had not obtained any prior permission from the Committee constituted under the Tamil Nadu Preservation of Private Forest Act, 1949 for the subsequent lease for 25 years.

(2) The plaintiff is not entitled to any damages by virtue of any notification under Section 18 of the Act, since such notification was only expression of intention to constitute an area as sanctuary and is not a final declaration and in the absence of a notification under Section 26A of the Act, it cannot be said that the plaintiff was prevented from enjoyment of the land in any manner.

(3) The possession of the land had never been taken by any Government authority and the plaintiff all along continuing in possession

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and the provisions contained in the Act had not been construed in proper perspective and the learned single Judge had failed to consider the fact that neither the plaintiff nor the original owner, namely, the Mutt, had surrendered the lands to the Government and the lands had not been acquired at all.

(4) Further contention highlighted in the appeal is that the suit itself is barred by limitation as Section 14 of the Limitation Act was not applicable.

9. After the appeal was listed for hearing, a petition has been filed for raising additional ground to the following effect :-

> "The suit is barred by section 60 of the Wild Life Protection Act since the actions complained of by the plaintiff as against the defendant/State Government are all one which have been taken in good faith under the powers of the Wild Life Protection Act, 1972 and hence the State Government and its officers have an immunity from being sued."

10. A counter affidavit has been filed by the plaintiff stating that it is not open to the State to raise any additional ground, which depends upon the question of fact.

11. In the appeal filed by the plaintiff, it has been contended that the learned single Judge should have awarded pre-suit interest at higher rate.

12. The basic facts are apparent from the narratives in the introductory portion of the judgment. Practically there is no dispute relating to the fact that initially the plaintiff was a lessee for five years under the owner and thereafter a notification under Section 18 of the Act was issued and subsequently a lease for 25 years was executed in favour of the plaintiff and various procedures contemplated in the Act were being followed, but ultimately the Collector issued an order excluding the lands of the plaintiff from the purview of the wild life sanctuary and such action was ultimately upheld by the Division Bench and the Supreme Court. On the basis of the above narratives, it was the contention of the plaintiff in the plaint as well as before the learned single Judge that the plaintiff should be compensated for the loss sustained by it on account of various notifications issued by the Collector under the Wild Life (Protection)Act, 1972.

13. It is therefore necessary to notice the relevant provisions contained in such Act and also the subsequent amendments:-

> "18. Declaration of sanctuary.- (1) The State Government may, by notification, declare any area to be a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wild

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life or its environment.

The provisions contained in Section 18(1) have been amended vide Section 15 of Act 44 of 1991 with effect from 2.10.1991. The amended provisions of Section 18(1) read as follows :-

> "18. Declaration of sanctuary.- (1) The State Government may, by notification, declare its intention to constitute any area other than an area comprised within any reserve forest or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wild life or its environment."

14. Section 19 as it originally stood is extracted hereunder:-

> "19. Collector to determine rights.- Whenever any area is declared to be a sanctuary, the Controller shall inquire into and determine, the existence, nature and extent of the rights of any person in or over the land comprised within the limits of the sanctuary."

Such provision has been amended by virtue of Section 16 of Act 44 of 1971 and the amended Section 19 reads as follows:-

> "19. Collector to determine rights.- When a notification has been issued under Section 18, the Controller shall inquire into and determine, the existence, nature and extent of the rights of any person in or over the land comprised within the limits of the sanctuary."

15. Sections 20, 21 and 22 of the Act are as follows :-

> "20. Bar of accrual of rights.- After the issue of a notification under section 18, no right shall be acquired in, on or over the land comprised within the limits of the area specified in such notification, except by succession, testamentary or intestate.
>
> 21. Proclamation by Collector.- When a notification has been issued under section 18, the Collector shall publish in the regional language in every town and village in or in the neighbourhood of the area comprised therein, a proclamation-
>
> (a) specifying, as nearly as possible, the situation an the limits of the sanctuary; and
>
> (b) requiring any person, claiming any right mentioned in section 19, to prefer before the Collector, within two months from the dat of such proclamation, a written claim in the prescribed form, specifying the nature and extent of such right with necessary details and the amount and particulars of compensation, if any, claimed in respect thereof.
>
> 22. Inquiry by Collector.- The Collector shall, after

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service of the prescribed notice upon the claimant, expeditiously inquire into-

(a) the claim preferred before him under clause (b) of section 21, and

(b) the existence of any right mentioned in section 19 and not claimed under clause (b) of section 21,

so far as the same may be ascertainable from the records of the State Government and the evidence of any person acquired with the same.

(N.B. The provisions contained in Sections 20, 21 and 22 have not undergone any change in the amending Act 44 of 1991.)

16. Section 24, as it originally stood before the amendment was as follows :-

24. Acquisition of rights.- (1) In the case of a claim to a right in or over any land referred to in section 19, the Collector shall pass an order admitting or rejecting the same in whole or in part.

(2) If such claim is admitted in whole or in part, the Collector may either-

(a) exclude such land from the limits of the proposed sanctuary, or

(b) proceed to acquire such land or rights, except where by an agreement between the owner of such land or holder of rights and the Government, the owner or holder of such rights has agreed to surrender his rights to the Government, in or over such land and on payment of such compensation, as is proved in the Land Acquisition Act, 1894.

Vide Section 17 of the amendment Act 44 of 1991, sub-clause (c) has been added. Section 24(2)(c) reads as follows:-

"(c) allow, in consultation with the Chief Wild Life Warden, the continuation of any right of any person in or over any land within the limits of the sanctuary."

(2) The acquisition under this Act of any land or interest therein shall be deemed to be acquisition for a public purpose.

Sections 25 and 26 have not been amended in any way by Act 44 of 1991. However Section 26A has been inserted by virtue of section 18 of Act 44 of 1991. Section 26A is to the following effect :-

"26A. Declaration of area as sanctuary.- (1) When -

(a) a notification has been issued under section 18 and the period for preferring claims has elapsed, and all claims, if any, made in relation to any land in an area intended to be declared as a sanctuary, have been disposed of by the State Government; or

17. Section 27, as per the original Act is as follows :-

27. Restriction on entry in sanctuary.- (1) No person other than, -

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(a) a public servant on duty,

(b) a person who has been permitted by the Chief Wild Life Warden or the authorised officer to reside within the limits of the sanctuary.

(c) a person who has any right over immovable property within the limits of the sanctuary,

(d) a person passing through the sanctuary along a public highway, and

(e) the dependents of the person referred to in clause(a), clause(b) or clause (c),

shall enter or reside in the sanctuary, except under and in accordance with the conditions of a permit granted under section 28.

(2) Every person shall, so long as he resides in the sanctuary, be bound-

(a) to prevent the commission, in the sanctuary, of an offence against this Act;

(b) where there is reason to believe that any such offence against this Act has been committed in such sanctuary, to help in discovering and arresting the offender;

(c) to report the death of any wild animal and to safeguard its remains until the Chief Wild Life Warden or the authorised officer takes charge thereof;

(d) to extinguish any fire in such sanctuary of which he has knowledge or information and to prevent from spreading, by any lawful means in his power, any fire within the vicinity of such sanctuary of which he has knowledge or information; and

(e) to assist any forest officer, Chief Wild Life Warden, Wild Life Warden or police officer demanding his aid for preventing the commission of any offence against this Act or in the investigation of any such offence."

Vide Section 19 of Act 44 of 1991, sub-section (3) and sub-section(4) are inserted, which are extracted hereunder :-

"27(3) No person shall, with intent to cause damage to any boundary-mark of a sanctuary or to cause wrongful gain as defined in the Indian Penal Code, 1860 (45 of 1860), alter, destroy, move or deface such boundary-mark.

(4) No person shall tease or molest any wild animal or litter the grounds of sanctuary."

18. Section 28 is as follows :-

"28. Grant of permit.- (1) The Chief Wild Life Warden may, on application, grant to any person a permit to enter or reside in a sanctuary for all or any of the following purposes, namely:-

(a) investigation or study of wild life and purposes ancillary or incidental thereto;

(b) photography;

(c) scientific research;

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(d) tourism;

(e) transaction of lawful business with any person residing in the sanctuary.

(2) A permit to enter or reside in a sanctuary shall be issued subject to such conditions and on payment of such fee as may be prescribed."

19. An analysis of the aforesaid provisions makes it clear that under the original provisions, by virtue of notification under Section 18 (1), a sanctuary was declared,but after amendment of such provisions by virtue of Act 44 of 1991 with effect from 2.10.1991, a notification under Section 18(1) is only a declaration of the intention of the State Government to constitute any area as sanctuary. As per the provision contained in Section 20, which has not been amended, once a notification under Section 18 is issued, no right shall be acquired in such notified area except by succession. As per the provisions contained in Section 21, which have not undergone any change, a proclamation is issued requiring any person claiming any right as indicated in Section 19 to prefer a written claim before the Collector within two months. Under Section 22, which has remained unamended, the Collector is required to enquire into the claim. Under the unamended provisions contained in Section 24, after making such enquiry, the Collector is required to pass an order admitting or rejecting the claim in whole or in part. Thereafter under Section 24 (2)(a), the Collector may exclude such land from the limits of the proposed sanctuary or under Section 24(2)(b), the Collector may proceed to acquire such land or rights on payment of compensation as provided in the Land Acquisition Act, 1894. Under Section 24(2)(c), which has been inserted by Act 44 of 1991, the Collector may allow the continuation of any right of any person within the limits of the sanctuary in consultation with the Chief Wild Life Warden. Section 25 of the Act days down certain ancillary provisions in connection with such land acquisition proceedings.

20. Under Section 26A, as inserted by Act 44 of 1991, final notification specifying the limits of the sanctuary is required to be issued by the State Government, obviously after finalisation of the proceedings as contemplated in Section 24 of the Act. Even though under the unamended provision issuance of any further notification was not specifically contemplated, it is obvious from the scheme of the unamended Act that the Collector was required to determine the rights of a person as contemplated in Section 19 and thereafter to take steps either to exclude such land from the limits of the proposed sanctuary or to acquire such right or land in accordance with the provisions contained in Sections 24 and 25 of the Act read with Land Acquisition Act, 1894.

The provisions contained in Section 27(1) and 27(2), which were part of the original Act, indicate only certain restrictions on entry in the sanctuary. Section 27(1)(c) does not impose any restriction on a person who has any right over any immovable property within the limits of the sanctuary to enter or reside in the sanctuary. Only the persons, who do not come within the category indicated in Section 27(1)(a) to (e), are

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required to obtain a permit as contemplated in Section 28 to enter or reside in a sanctuary. However, no such permit was required for a person who has any right over the immovable property within the limits of the sanctuary. He can exercise his normal right available, save and except certain restrictions which are contemplated. But, there appears to be no provision prohibiting an owner of a land exercising his right over such land. This was the position before the Act was amended and continues to be so even after amendment. However, under the unamended provisions, the Collector was either required to exclude such land from the limits of the proposed sanctuary or proceed to acquire such land or right. It is obvious that until such land was acquired, the owner could more or less exercise all his rights. Under the amended provision a third alternative is contemplated under Section 24(2)(c) to allow the continuance of such right.

21. In the present case, the facts which have been hitherto culled out, indicate that initially there was a declaration of a sanctuary under Section 18(1) of the Act, but the process of acquisition was aborted. Section 20 contemplates that after issuance of such notification under Section 18, "... no right shall be acquired in, on or over the land comprised within the limits of the area specified in such notification, except by succession". As already analysed the provisions indicate that mere issue of notification under Section 18 does not debar the owner of any property in exercising his normal rights and similarly such right can be exercised by his heir. The embargo envisaged under Section 20 is relating to inter vivos transfer of any right in or over the land comprised within the area. Therefore, the plaintiff as an existing lessee for five years and the original owner were as such not debarred from exercising any right. However, it is apparent from the admitted facts that the subsequent lease for 25 years was executed in favour of the plaintiff after issuance of notification under Section 18. Since the plaintiff claims right on the basis of subsequent lease for 25 years, which was admittedly executed by the original owner after notification under Section 18, it is doubtful whether the plaintiff had acquired any right at that time, at least against the State. At any rate, even assuming that the plaintiff had any right as a lessee, there was no statutory embargo debarring the plaintiff from exercising his rights.

22. The plaintiff has relied upon the fact that an order was issued by the Collector rejecting the request of the plaintiff seeking permission to clear felling trees in 10 acres of land. Such request was turned down on the ground that a notification under Section 18 had been issued and clear felling of trees was likely to cause erosion of soil and at any rate it was not possible for the plaintiff to clear the area during the remaining period available to him under the lease, which was at that stage for a period of five years. Even assuming that such order of the Collector can be considered to be a wrongful order depriving the plaintiff's right to fell the trees over an extent of 10 acres at that time, cause of action obviously arose at that stage and it was open to the plaintiff to pursue its remedy in accordance with law. If the contention

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of the plaintiff is to the effect that it had right to cut the trees and get the market value of the trees, by the time the suit was filed, the plaintiff was required to prove that by virtue of such denial by the Collector in the year 1976 the trees had been destroyed and there has been any consequential loss. There is nothing on record to indicate that there has been any loss to the plaintiff on account of such denial by the Collector as by the time of filing of the suit it must be assumed that the trees were still available and may have become more valuable. Even otherwise, assuming that there was any cause of action to claim damages or compensation, such claim was obviously barred by limitation by the time of filing of the suit after two decades.

23. The next cause of action as projected by the plaintiff was on account of issuance of order on 19.11.1993, excluding the area from the proposed sanctuary. The scheme of the Act, as apparent from the provisions of the Act, is to the effect that after issuance of notification under Section 18, the Collector is required to issue a proclamation requiring any person to file written claim in the prescribed form. It is no doubt true that pursuant to such proclamation the plaintiff as well as the original owner had filed certain applications which were being inquired into, but before the matter could be finalised, it was decided to exclude the area from the purview of the sanctuary. Whenever any person claims any right in or over any land, it was open to the Collector under unamended Section 24 either to exclude such land from the limits of the proposed sanctuary or proceed to acquire such land or rights, on payment of such compensation as provided in the Land Acquisition Act, 1894. After the amendment of the Act by virtue of Act 44 of 1991 with effect from 2.10.1991, the Collector is also empowered in consultation with the Chief Wild Life Warden, to permit the continuation of any right of any person in or over any land within the limits of the sanctuary. Even though certain enquiries were going on with a view to ascertain the compensation payable, ultimately the authority decided to exclude the area. Such order of the authority was upheld by the High Court under Act 44 of 1991, declaration of any particular area is contemplated under Section 26A. But even before that, it was always open to the appropriate authority to exclude any area or to pay compensation in order to acquire such land by completing the acquisition as contemplated in Section 25. Once a particular area is considered as sanctuary as envisaged, other restrictions envisaged in Section 27 come into existence. A person, who is owner of certain lands which comes within sanctuary, may still continue to be the owner of such lands, but he may be subjected to certain disabilities.

24. In the present case, there is nothing on record to indicate that in respect of the area claimed, the plaintiff and the original owner had ever been dispossessed and prevented from exercising any right, save and except the refusal to grant permission for felling the trees way back in 1976. It is of course true that there are several correspondence on record which indicate that for ascertaining the compensation, the Collector and other authorities were asking for allotment of higher amount

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for the purpose of finalising the compensation and award, but, there is no material on record to indicate that the award proceedings, so far as the plaintiff and the land owner are concerned, had ever been finalised.

25. It is of course true that the letter Ex.P-17 dated 28.5.1987 written by the Collector to the Deputy Secretary to the Government recited that the lands of the plaintiff were declared as wild life sanctuary and its development activities had been stopped. However, this communication between two functionaries of the Government should not be construed as denying the original owner or the plaintiff any particular right. There is nothing on record to indicate that because of various steps taken under the Act, the original owner and the plaintiff were prevented from going inside the forest and from collecting the usufructs. If under any misunderstanding relating to scope of the notifications and declarations already issued the plaintiff stopped its activities, it was the plaintiff's own misfortune and it cannot be said that the plaintiff was prevented in any unlawful manner by the State in exercising its lawful right. Merely because various correspondence indicate that the lands were covered under notification issued under Section 18, it cannot be said that the original owner and the plaintiff had been deprived. The only direct document relating to refusal to grant clear fell trees within 10 acres has already been analysed and that factor does not give rise to a cause of action for claiming an astronomical sum as claimed by the plaintiff. Since the plaintiff was not allowed to fell the trees, it can be well concluded that the trees are still available to be exploited after the area was excluded.

However, from the above document alone, which was inter-departmental communication made in the year 1987, it cannot be construed that the original owner and the plaintiff had in fact been prevented from exercising its rights.

26. From the oral evidence of the plaintiff, it does not appear that the original owner and the plaintiff had been wrongfully deprived from exercising their right. In his evidence, P.W.1., a partner of the plaintiff firm, has merely narrated various dates and events and the issuance of various notifications. The only aspect which is relevant for the present purpose is to the following effect:-

> "I sought permission from the Collector for planting cardamom. ... I sent the letter. Ex.P-14 is the copy of the rejection order."

Apart from this, there is not even a single whisper that that the original owner or the plaintiff had been prevented. Of course it is stated:

> "Under Ex.P-17, the Collector himself had stated that the development work had been stopped".

There is difference between stopping the development work and preventing the original owner or the plaintiff from enjoying the usufructs including coffee, cardamom and tea.

27. Ex.P-14 relates to the prayer for clear felling trees in 10

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acres. That cannot form basis for claiming loss at the rate of Rs.2,31,000/- per annum for 22 years. In the various writ petitions and the writ appeals, which had been filed, we do not find any allegation that at any point of time the original owner and the plaintiff had been prevented from exercising their normal rights. We fail to understand as to why the plaintiff should be paid compensation by way of damages unless there is any unlawful act on the part of the defendant. Merely because the plaintiff misunderstood the scope of declaration under Section 18 of the Act or the fact that some enquiries were pending, is not a ground to award damages.

28. It is no doubt true that in the Division Bench decision, while deciding the writ appeal in favour of the Government, certain observations have been made indicating that it is open to the aggrieved party to seek for adequate compensation. Such observations cannot, however, construed to mean that rights and liabilities of the parties had been decided and only quantification is to be made. On the other hand, it was only made clear that even though the Government cannot be forced to acquire the land for the purpose of sanctuary, it was open to the aggrieved party to pursue his remedy obviously in accordance with law. If the person sustains any injury on account of any unlawful activity of the State or any of its official, it was for the plaintiff to clearly allege and prove such unlawful activity in order to claim any compensation by way of damages. Obviously the plaintiff does not have right to receive any compensation as envisaged under the Act. If he has to receive any amount on account of any unlawful activity on the part of the State or its official, a specific case has to be made out. In our considered opinion, in the present case, no such specific case has been pleaded, far less proved.

29. The next question is relating to limitation. Learned single Judge has simply referred to the contention raised by the plaintiff claiming that the period during which the writ petition remained pending and was allowed and the subsequent period to be excluded by applying Section 14 of the Limitation Act which is extracted hereunder:-

> Exclusion of time of proceeding bona fide in Court without jurisdiction. (1)In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.
>
> (2)In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such

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proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3)Notwithstanding anything contained in rule 2 of Order 23 of the Code of Civil Procedure, 1908(5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule1 of that order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation:- For the purposes of this section -

(a)in excluding the time during which a former civil proceeding w2as pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b)a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c)misjoinder of parties or of causes of action shall be deemed to be a cause of a lie nature with defect of jurisdiction.

Now the plaintiff is claiming damages on account of the fact that the area has been excluded from the sanctuary and thereby it has sustained damages, obviously the cause of action arose on that date i.e., 19.11.1993. The writ petition, which was filed was for quashing such order, was obviously for a different relief. The writ petition was dismissed on merit and not for want of jurisdiction. Prima facie we have doubt as to whether the period during which such litigations remained pending in the High Court can be excluded under Section 14 of the Limitation Act. However, since we have negatived the claim of the plaintiff on merits, it is not necessary to delve further into such question.

30. Learned single Judge has allowed in part the claim of the plaintiff relating to interest from 1976 till 1997 at the rate of 6%. This interest is for the period prior to filing of the suit. The question relating to payment of interest prior to filing of the suit obviously depends upon the provisions contained in the Interest Act. In the present case, neither there is any contract for payment of any interest nor there is any statutory requirement for payment of interest nor any notice has been issued by the plaintiff claiming interest from a particular date. Therefore, in our considered opinion, even assuming that the plaintiff was entitled to any compensation, no interest was payable for the period prior to filing of the suit. Therefore, the finding of the learned single Judge on Issue No.6 is liable to be rejected.

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31. For the aforesaid reasons, we allow the appeal filed by the State and dismiss the appeal filed by the plaintiff. The parties shall bear their own costs throughout.

dpk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Sub-Asst. Registrar, Original Side, High Court, Madras.

+2 ccs to the Spl.Government Pleader (Forests),Sr.Nos.11418,11419.

+4 ccs to Mr.M.Balachandar, Advocate Sr.No.11283,11697.

JRG(CO)
dcp/12.3.07

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